

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

L.H., et al.,

Plaintiffs,

v.

Independence School District,

Defendant.

Case No. 4:22-cv-00801-RK

DEFENDANT’S BRIEF IN SUPPORT OF A STAY

Defendant Independence School District, by and through undersigned counsel, submits the following Brief in support of a stay of this case pending resolution of the appeal of *C.K.-W v. Wentzville R-IV School District*, Case No. 22-2885, currently pending before the Eighth Circuit Court of Appeals.

1. This is a civil action for injunctive relief filed by four parents of students of the Independence School District (“District”).
2. Plaintiffs are challenging District’s Board Policy 6241, which allows patrons to challenge books and other materials maintained in school libraries.
3. Under Policy 6241, upon receipt of a challenge, the District removes the material from its libraries pending a formal review process.
4. In short, Plaintiffs assert that the “automatic removal” policy is unconstitutional in that it violates Plaintiffs’ children’s First Amendment and Due Process rights.
5. Plaintiffs’ counsel is currently challenging the same board policy of the Wentzville School District, on similar bases, in *C.K.-W v. Wentzville R-IV School District*, 4:22-cv-191-MTS, currently pending in the United States District Court for the Eastern District of Missouri.

6. In *C.K.-W*, Plaintiffs – like here – filed a Motion for Preliminary Injunction, which the Eastern District denied. *See C.K.-W v. Wentzville R-IV Sch. Dist.*, No. 4:22-cv-00191-MTS, 2022 U.S. Dist. LEXIS 139554, at *14 (E.D. Mo. Aug. 5, 2022).

- a. The Eastern District’s decision, and the reasoning which led to it, served as the primary source of the Independence School District’s briefing in this instant case, both in its Opposition to Plaintiffs’ Motion for Preliminary injunction, as well as its Motion to Dismiss.

7. On September 2, 2022, Plaintiffs in *C.K.-W* filed a Notice of Interlocutory Appeal, which is now pending before the Eighth Circuit Court of Appeals, Case No. 22-2885.

- a. Plaintiffs’ Appeal Brief is due January 13, 2023. Wentzville School District’s Response Brief is due thirty (30) days after that, and Plaintiffs’ Reply Brief is then due twenty-one (21) days after that.
- b. As such, briefing should be completed by March 6, 2023.

8. Once the Eighth Circuit issues its decision in *C.K.-W*, it will be the first time that a federal court of appeals has directly analyzed the constitutionality of the type of policy subject to both this case and *C.K.-W*.

9. As such, the Eighth Circuit’s decision will have a significant impact on – and potentially be dispositive of – Plaintiffs’ claims in this matter.

10. A stay of proceedings in this case serves the interests of judicial economy.

11. If this Court were to proceed and issue a decision with respect to either the Motion to Dismiss or the Motion for Preliminary Injunction, there is a significant risk that once a decision is issued in *C.K.-W*, the Court will need to reconsider and modify its prior order(s).

12. There is also a significant risk that the parties would be required to engage in discovery and other activities that will ultimately prove to be unnecessary, all of which would require the parties to expend unnecessary legal fees and expenses.

13. Finally, the potential prejudice or harm resulting from a stay is extremely low. As discussed in the Opposition to Plaintiff's Motion for Preliminary Injunction, any alleged harm suffered by Plaintiffs is speculative, at best.

- a. Since Board Policy 6241 was enacted ten (10) years ago, there has been a single challenge to a single book pursued under the policy. *See* Doc. 16-1.
- b. And, the result of that challenge was not even to permanently remove the book from its libraries. *See id.* Instead, the Board decided to restrict the book by limiting its availability to middle school and high school libraries, where the book would be age appropriate. *See id.*
- c. And, unlike the plaintiffs in *C.K.-W v. Wentzville R-IV School District*, here, Plaintiffs have not challenged the age restriction placed on a book, their challenge relates only to Plaintiffs' speculative concerns that a book in their student's library may be challenged and temporarily removed in the future. Currently, no such challenges are pending in the District. As such, if Wentzville School District were to prevail on the appeal in *C.K.-W*, the decision would almost certainly close the door on Plaintiffs' claims, here.

For the foregoing reasons, Defendant Independence School District respectfully requests that the Court stay this matter pending resolution of the appeal in *C.K.-W v. Wentzville R-IV School District*, Case No. 22-2885, currently pending before the Eighth Circuit Court of Appeals, and for such other relief as it may show itself entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing was filed and served upon all attorneys of record, through the Court's electronic filing and service system, on January 4, 2023:

/s/ Ryan S. VanFleet

Attorney for Defendant